

JUDGE SEIBEL

11 CIV 5235

IN THE UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

PAUL AIOLA,

Plaintiff

v.

NELSON, WATSON & ASSOCIATES,
LLC,

Defendant

Case No.:

COMPLAINT AND DEMAND FOR
JURY TRIAL

(Unlawful Debt Collection Practices)

FILED
2011 JUL 27 PM 4:17
S.D. OF N.Y.

COMPLAINT

PAUL AIOLA ("Plaintiff"), by his attorneys, KIMMEL & SILVERMAN, P.C., alleges
the following against NELSON, WATSON & ASSOCIATES, LLC ("Defendant"):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15
U.S.C. § 1692 *et seq.* ("FDCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states
that such actions may be brought and heard before "any appropriate United States district court
without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original
jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business in the State of New York and therefore, personal
jurisdiction is established.

1 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

2 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

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4 **PARTIES**

5 6. Plaintiff is a natural person residing in Old Bethpage, New York, 11804.

6 7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

7 8. Defendant is a national debt collection company with corporate headquarters
8 located at 80 Merrimack Street, Lower Level, Haverhill, Massachusetts, 01830.

9 9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6),
10 and repeatedly contacted Plaintiff in an attempt to collect a debt.

11 10. Defendant acted through its agents, employees, officers, members, directors,
12 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

13
14 **PRELIMINARY STATEMENT**

15 11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute,
16 which prohibits a catalog of activities in connection with the collection of debts by third parties.
17 See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that
18 violates its provisions, and establishes general standards of debt collector conduct, defines abuse,
19 and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the
20 FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and
21 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or
22 unconscionable conduct, both generally and in a specific list of disapproved practices.
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1 12. In particular, the FDCPA broadly enumerates several practices considered
2 contrary to its stated purpose, and forbids debt collectors from taking such action. The
3 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not
4 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any
5 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt
6 collector may not use any false, deceptive, or misleading representation or means in connection
7 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use
8 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.
9 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there
10 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which
11 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in
12 connection with the collection of a debt.
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14 13. In enacting the FDCPA, the United States Congress found that “[t]here is
15 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many
16 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,
17 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress
18 additionally found existing laws and procedures for redressing debt collection injuries to be
19 inadequate to protect consumers. 15 U.S.C. § 1692b.
20

21 14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt
22 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection
23 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt
24 collection practices are not competitively disadvantaged, and to promote consistent State action
25 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.

FACTUAL ALLEGATIONS

15. At all relevant times, Defendant was attempting to collect a consumer debt from Plaintiff for a credit card used for personal expenses.

16. The alleged debt at issue arose out of transactions, which were primarily for personal, family, or household purposes.

17. Beginning in or around December 2010 and continuing through April 2011, Defendant made continuous and repeated calls to Plaintiff's cellular in an attempt to collect a consumer debt from Plaintiff.

18. Defendant and its employee identified as "Steve Wilson," harassed Plaintiff in an attempt to collect the alleged debt.

19. Defendant intentionally wanted to harm Plaintiff and cause injury, stress, fear and humiliation, believing that to do so would substantially increase the likelihood of the debt being paid by Plaintiff.

20. Plaintiff received phone calls and voice messages from Defendant on a number of occasions from the following phone number (800) 764-1320; the undersigned has confirmed that the number belongs to Defendant.

21. In early December 2010, Defendant's representative contacted Plaintiff and informed him that he owed an alleged debt in the amount of \$8,000.00.

22. Defendant's representative went on to state that if the alleged debt was not paid Defendant would damage Plaintiff's credit and Defendant would obtain a judgment against him.

23. Defendant made these statements intending to harm Plaintiff and secure payment of the debt.

1 24. Plaintiff, fearing this debt would harm his credit and Defendant would obtain a
2 judgment against him, made arrangements with Defendant to pay an initial down payment of
3 \$250.00, followed by \$100.00 per month for six (6) months toward the alleged debt.

4 25. On January 10, 2011, Defendant sent Plaintiff a letter informing him that his
5 postdated payment of \$100.00 would be deposited on January 18, 2011. A true and correct copy
6 of the January 10, 2011 letter is attached hereto as Exhibit "A".

7 26. When Plaintiff received the January 10, 2011 letter he learned that the alleged
8 debt in question had been purchased by LVNV Funding and was older than six (6) years.

9 27. Upon information and belief, the last time that Plaintiff had made payment on the
10 credit card was over seven (7) years ago.

11 28. The statute of limitations for open credit accounts in the State of New York is six
12 (6) years. *See N.Y. Civ. Prac. L. & R. §213(1)*.

13 29. Defendant does not file suit on time-barred debt.

14 30. Defendant threatened to file suit against Plaintiff without intention to do so.

15 31. Defendant did not intend to take legal action.

16 32. Further, within five (5) days of its initial communication with Plaintiff, Defendant
17 failed to send Plaintiff written correspondence advising him of his rights to dispute the debt
18 and/or request verification of the alleged debt.

19 33. Had Defendant provided an appropriate communication in accordance with 15
20 U.S.C. §1692g, Plaintiff would have been alerted of his right to validate and question the
21 amount claimed and the legal obligation to do so.

22 34. Defendant's actions in attempting to collect the alleged debt were made with the
23 intent to harass, abuse, annoy, and deceive Plaintiff into making payment.
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1 35. Defendant intentionally engaged in this course of conduct stated above, to
2 intimidate, mislead, cajole and confuse Plaintiff into believing that the lesser cost to him was to
3 pay an out-of-statute debt, than to challenge Defendant in any way.

4 5 **CONSTRUCTION OF APPLICABLE LAW**

6 36. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &
7 Durand, 103 F.3d 1232 (5th Cir. 1997). “Because the Act imposes strict liability, a consumer
8 need not show intentional conduct by the debt collector to be entitled to damages.” Russell v.
9 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233
10 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector’s legal status
11 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

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13 37. The FDCPA is a remedial statute, and therefore must be construed liberally in
14 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The
15 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit
16 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the
17 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be
18 construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.
19 2002).

20
21 38. The FDCPA is to be interpreted in accordance with the “least sophisticated”
22 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano
23 v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,
24 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for
25 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,

1 and the fact that a false statement may be obviously false to those who are trained and
2 experienced does not change its character, nor take away its power to deceive others less
3 experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it
4 ensures protection of all consumers, even naive and trusting, against deceptive collection
5 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of
6 collection notices. Clomon, 988 F. 2d at 1318.

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10 **COUNT I**

11 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

12 39. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or
13 more of the following ways:

- 14 a. Defendant violated of the FDCPA generally;
- 15 b. Defendant violated §1692d of the FDCPA by harassing Plaintiff in
16 connection with the collection of an alleged debt;
- 17 c. Defendant violated §1692d(5) of the FDCPA, when it caused the Plaintiff's
18 telephone to ring repeatedly or continuously with the intent to harass, annoy
19 or abuse Plaintiff;
- 20 d. Defendant violated §1692e of the FDCPA by using false, deceptive, or
21 misleading representations or means in connection with the collection of a
22 debt;
- 23 e. Defendant violated §1692e of the FDCPA by threatening to take action that it
24 could not take and/or did not have the intent to take;
- 25 f. Defendant violated § 1692e(10) of the FDCPA by using false representations

- 1 or deceptive means to collect or attempt to collect a debt;
- 2 g. Defendant violated §1692f of the FDCPA by using unfair and unconscionable
- 3 means with Plaintiff to collect or attempt to collect a debt;
- 4 h. Defendant violated § 1692g of the FDCPA by failing to send written
- 5 notification, within five (5) days after its initial communication with Plaintiff,
- 6 advising Plaintiff of her rights to dispute the debt or request verification of the
- 7 debt; and
- 8 i. Defendant acted in an otherwise deceptive, unfair and unconscionable manner
- 9 and failed to comply with the FDCPA.
- 10
- 11

12 WHEREFORE, Plaintiff, PAUL AIOLA, respectfully prays for a judgment as follows:

- 13 a. All actual compensatory damages suffered pursuant to 15 U.S.C. §
- 14 1692k(a)(1);
- 15 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant
- 16 to 15 U.S.C. § 1692k(a)(2)(A);
- 17 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
- 18 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3);
- 19 e. Any other relief deemed appropriate by this Honorable Court.
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22 **DEMAND FOR JURY TRIAL**

23 PLEASE TAKE NOTICE that Plaintiff, PAUL AIOLA, demands a jury trial in this case.

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RESPECTFULLY SUBMITTED,

1 DATED: 07/25/11

KIMMEL & SILVERMAN, P.C.

2
3 By: _____

Craig Thor Kimmel

4 Attorney ID # 2790038

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